

**Small Claims
Final Determination
Findings and Conclusions**

Petition Number: 87-019-08-1-5-00025
Petitioners: Albert R. and Elizabeth Ashley
Respondent: Warrick County Assessor
Parcel No.: 87-09-02-100-019.000-002
Assessment Year: 2008

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

PROCEDURAL HISTORY

1. The Petitioners initiated an assessment appeal with the Warrick County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 8, 2009.
2. The PTABOA issued notice of its decision on October 30, 2009.
3. The Petitioners filed a Form 131 petition with the Board on November 30, 2009. The Petitioners elected to have their case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 2, 2010.
5. The Board scheduled an administrative hearing on August 12, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at the hearing:¹
 - a. For Petitioners: Albert R. and Elizabeth Ashley, property owners
 - b. For Respondent: Angela Wilder, Warrick County Assessor
Brett Bombick, Tyler Technologies

FACTS

7. The property at issue is a house on 10.3100 acres located at 1911 Kelly Road, Boon Township, Boonville, Warrick County, Indiana.

¹ Marilyn S. Meighen of Meighen & Associates, P.C., appeared at the hearing representing the Respondent.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2008, the PTABOA determined the assessed value of the subject property to be \$55,400 for the land and \$135,800 for the improvements, for a total assessed value of \$191,200.
10. The Petitioners requested an assessed value of \$14,500 for the land and \$155,500 for the improvements for a total assessed value of \$170,000.

ISSUES

11. Summary of the Petitioners' contentions in support of an alleged error in the assessed value of their property:
 - a. The Petitioners contend their property's 2008 assessed value is over-stated based on the property's appraised value. *Albert Ashley argument*. In support of this contention the Petitioners presented a copy of an appraisal prepared by licensed Indiana appraiser Andrea N. Peppiatt and her appraiser supervisor Jeffrey J. O'Dell of Parker Real Estate Appraisal Co., Inc., of Evansville, Indiana. *Petitioner Exhibit 4*. The appraisers certified that they prepared their estimate of value according to the Uniform Standards of Appraisal Practice (USPAP). *Id.* According to the report, the appraisers estimated the property's value to be \$166,000 as of July 6, 2004. *Id.* Similarly, the Petitioners presented a copy of an appraisal prepared by licensed Indiana appraiser Jeffrey W. Daily of Appraisal Consultants, Inc., of Evansville, Indiana. *Petitioner Exhibit 5*. Mr. Daily certified that he prepared his estimate of value according to USPAP standards. *Id.* In his report, Mr. Daily estimated the property's value to be \$170,000 as of February 19, 2009. *Id.*
 - b. The Petitioners also contend their property is over-valued based on the sales and listing prices of nearby properties. *Albert Ashley argument*. In support of this contention, the Petitioners presented an advertisement for a four-bedroom, two-bath house with a fully-finished walkout basement and a 32-foot-by-40-foot pole barn with 200-amp electrical service on thirteen acres in Warrick County for \$174,900. *Petitioner Exhibit 6*. The Petitioners also presented a list of three agricultural parcels that recently sold in the area: a 184.088 acre parcel which sold for \$358,500 or \$1,948.37 per acre; a 220.873 acre parcel which sold for \$412,200 or \$1,865.16 per acre; and a 225.043 acre parcel which sold for \$420,811 or \$1,870.27 per acre.² *Albert Ashley testimony; Petitioners Exhibit 7*.
 - c. Further, the Petitioners argue that the Assessor improperly changed 8.7960 acres of their land from "agricultural acreage" to "agricultural excess residential acreage." *Albert Ashley argument*. According to Mr. Ashley, when the Petitioners purchased the property in the early 1960s, they used it for raising cattle, hogs and horses and for raising and harvesting hay, but the Petitioners' advancing age caused them to stop

² The Board calculated slightly different numbers than the Petitioners reported on their exhibit: \$1,947.43, \$1866.23, and \$1869.91 respectively.

using the ground for livestock or hay. *Id.* However, Mr. Ashley argues, the land has almonds, walnuts, fruit trees and blackberries. *Id.*

- d. In addition, the Petitioners contend, the assessment is unfair because the land is dissected by a nearly one-acre lake and ditches which block those acres from road access and residential development. *Albert Ashley argument.* According to Mrs. Ashley, there is little they can do with the property because it is land-locked and cannot be sold to anyone else. *Elizabeth Ashley argument.* In support of their contention, the Petitioners presented an aerial map of the property showing the buildings and highlighting the lake and ditches. *Petitioner Exhibit 8.*
- e. Finally, in response to the Respondent's testimony about land sales used in the trending procedure, Elizabeth Ashley argued that the sales prices of those properties supported a reduction in their property's assessed value. *Elizabeth Ashley testimony.* According to Mrs. Ashley, some of the properties listed by the Respondent had improvements similar in size to the subject property, but the sales prices were lower than their property's assessed value. *Id.* Moreover, the Petitioners contend, property values are falling, but the Assessor continues to increase the value of their property. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends that the Petitioners' property's 2008 assessed value is correct based upon the sales of two comparable properties whose improvements are similar in style, age and amenities. *Meighen argument.* The Warrick County Assessor's witness, Brett Bombick of Tyler Technologies, testified that 300 East Shelton Road in Boonville, sold on June 7, 2007, for \$163,500, or \$95 per square foot. *Id.; Respondent Exhibit F.* Similarly, 4133 State Route 61 North in Boonville, sold for \$168,000, or \$109 per square foot. *Bombick testimony; Respondent Exhibit G.* The Petitioners' property is assessed for only \$87 per square foot. *Bombick testimony.*
- b. The Respondent further contends that the Petitioners' appraisals fail to raise a prima facie case that their property's assessment is incorrect because the appraisals' estimates of value are too far removed from the proper valuation date. *Meighen argument.* Mr. Bombick testified that the valuation date for the March 1, 2008, assessment is January 1, 2007. *Bombick testimony.* According to Mr. Bombick, the July 6, 2004, appraisal is almost thirty months prior to the relevant valuation date and February 19, 2009, is more than two years after the relevant valuation date. *Id.* While the 2009 appraisal is closer to the relevant valuation date, Mr. Bombick argues, the appraisal used comparable sales occurring between June 4, 2008, and November 26, 2008, which are all more than eighteen months beyond the January 1, 2007, valuation date for the 2008 assessment. *Id.*
- c. In addition, the Respondent contends the Petitioners' appraiser used sales that were not comparable to the subject property or appropriate for use in an appraisal in the

2009 appraisal. *Meighen argument*. According to Mr. Bombick, Mr. Daily's first comparable property, located at 5411 Bethany Church Road, Boonville, was sold by Deutsche Bank National Trust Company for \$154,000 on November 26, 2008. *Id*. However, Mr. Bombick argues, the property sold on March 7, 2006, for \$264,480. *Bombick testimony; Respondent Exhibit A*. According to Ms. Meighen, the International Association of Assessing Officers' (IAAO) publication Standard on Ratio Studies approved by the organization in July 1999, and published in September/October 1999 cautions assessing officers that sales involving financial institutions are "often found to be invalid for ratio studies, and can be automatically excluded..." *Meighen argument; Respondent Exhibit C*. Similarly, Mr. Daily's second comparable property, located at 333 West Tennyson Road, Boonville, involved the sale of a property by a trust. *Bombick testimony; Respondent Exhibit B*. According to the Standard on Ratio Studies, a sale settling an estate, or trust sale is also considered invalid. *Meighen argument; Respondent Exhibit C*. Moreover, Mr. Daily adjusted the three sales in his sales comparison approach from sixteen to 40.3 percent. *Bombick testimony*. Ms. Meighen argues that there were a number of valid arms-length property sales in the subject property's neighborhood which could have been used as comparable sales in an appraisal. *Meighen argument; Respondent Exhibit E*.

- d. Ms. Meighen also contends that the Petitioners' comparable sales failed to provide probative evidence of the value of their land. *Meighen argument*. According to Mr. Bombick, the three large agricultural parcels cited by the Petitioners are not comparable to the subject property because large tracts of agricultural land often sell for less per-acre than smaller parcels on which a home site exists. *Bombick testimony*. Further, Bombick testified that, in his experience property values in most segments of the real estate market in Warrick County remained stable, including during the assessment period under appeal. *Id*.
- e. Finally, Ms. Meighen argues that the Petitioners failed to provide evidence of the bottom line market value-in-use of their property. *Meighen argument*. According to Ms. Meighen, the Petitioners' burden in their appeal is two-fold: (1) to demonstrate the assessed value currently assigned to their property is not a reasonable measure of market value-in-use, and (2) to demonstrate a reasonable measure of market value-in-use. *Meighen argument, citing Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003). Because the Petitioners only addressed the assessed value of their land, Ms. Meighen argues, they failed to raise a prima facie case that their assessment did not reasonably reflect the value of the property as a whole. *Id*.

RECORD

13. The official record for this matter is made up of the following:

- a. The Petition.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Copy of the Form 130 Petition filed July 8, 2009,
Petitioner Exhibit 2 – Copy of the Form 115 Notification of Final Assessment
Determination dated October 30, 2009,
Petitioner Exhibit 3 – Copy of the Form 131 Petition filed November 30, 2009,
Petitioner Exhibit 4 – Appraisal of the subject property as of July 6, 2004,
Petitioner Exhibit 5 – Appraisal of the subject property as of February 19, 2009,
Petitioner Exhibit 6 – Home sale advertisement, dated October 16, 2009,
Petitioner Exhibit 7 – List of three land sales,
Petitioner Exhibit 8 – Aerial map of the subject property,

Respondent Exhibit A – Copy of the property record card (PRC) and a listing
sheet for 5411 Bethany Church Road,
Respondent Exhibit B – Copy of the PRC for 333 West Tennyson Road,
Respondent Exhibit C – Excerpt from the 1999 IAAO Standard on Ratio Studies,
Respondent Exhibit D – Copy of the PRC for the subject property,
Respondent Exhibit E – List of neighborhood sales from January 1, 2006, through
December 31, 2007,
Respondent Exhibit F – Copy of PRC for 300 East Shelton Road,
Respondent Exhibit G – Copy of the PRC for 4133 North Highway 61,
Respondent Exhibit H – Memorandum of law,

Board Exhibit A – Form 131 Petition and related attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

ANALYSIS

14. The most applicable governing cases are:

- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to raise a prima facie case for a reduction in their property’s assessed value. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally used three methods to determine a property’s market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
 - b. A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment, the valuation date was January 1, 2007 50 IAC 21-3-3.
 - c. The Petitioners first argue that their property is over-valued based on its appraised values. In support of this contention, the Petitioners presented two appraisals of the subject property: one that values the property at \$166,000 as of July 6, 2004, and one

- that values the property at \$170,000 as of February 19, 2009. Appraisals performed in accordance with generally recognized appraisal principles are often enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Here, however, the appraisals value the property too far removed from the January 1, 2007, valuation date for the March 1, 2008, assessment. The 2004 appraisal values the property almost thirty months before the valuation date; whereas the 2009 appraisal values the property over two years after the valuation date. Therefore neither appraised value is probative of the property's market value in use for the Petitioners' 2008 assessment appeal.
- d. The Petitioners also argue that their property is over-valued based on the listing price of a nearby home and based on the sales prices of three tracts of land. The Petitioners arguments fail for several reasons. First, in order to effectively use the sales comparison approach as evidence in property assessment appeals, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id.* The Petitioners, however, failed to show that their property was comparable to the house advertised for sale on October 16, 2009. Similarly, the Petitioners' failed to show how a 184 acre tract, a 220 acre tract and a 225 acre tract were comparable to the Petitioners' ten acre lot. In addition, the listing is dated October 16, 2009, and Mr. Ashley referred to the land sales during the Petitioners' August 12, 2010, hearing as "recent." Thus, like the Petitioners' appraised values, the sales and listing were too far removed from the valuation date to be probative of the property's market value-in-use as of January 1, 2007.
- e. Finally, the Petitioners contend that the assessment is incorrect because the assessor failed to classify their land as agricultural. Indiana Code § 6-1.1-4-13, however, states that "land shall be assessed as agricultural land only when it is devoted to agricultural use..." While the land was once used for agricultural pursuits, the Petitioners admitted that it is no longer used as such. Thus, the Petitioners failed to show that the Assessor erred in assessing the additional acreage as excess residential acreage rather than agricultural land.
- f. Where a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

16. The Petitioners failed to raise a prima facie case that the subject property is over-valued. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at: <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.